IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.10.2007

C O R A M :

THE HONOURABLE MR.A.P.SHAH, THE CHIEF JUSTICE
THE HONOURABLE MRS.JUSTICE PRABHA SRIDEVAN
AND
THE HONOURABLE MR.JUSTICE P. JYOTHIMANI

W.P.No.28304 OF 2007
and
M.P.Nos.1 to 3 of 2007

Rukmani College of Education, run by
Rukmani Educational and Charitable
Trust, No.208, National Highway,
Mangalapuram Post,
Kadayanallur-627 751,
Tirunelveli District, rep.by its
Correspondent S.Deepak. ... Petitioner

-vs-

1. The State of Tamil Nadu, rep.by
its Secretary, Higher Education
Department, Fort St.George,
Chennai-600 009.

2. The Registrar,
Manonmaniam Sundaranar University,
Abishekapuram,
Tirunelveli District.

3. The Controller of Examinations,
Manonmaniam Sundaranar University,
Abishekapuram,
Tirunelveli District. ... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of certiorarified mandamus calling for the records from the second respondent in No.MSU/CD/FA/B.Ed./2007, dated 08.8.2007, quash the same as far as it relates to the granting of affiliation from the Academic Year 2007-2008 onwards and further direct the 2nd respondent to grant affiliation to one Year B.Ed.Course run by the petitioner from the Academic Year 2006-2007 onwards and pass any other further or other orders.

For petitioner :: Mr.P.Jayaraman, S.C. For
Mr.B.Rabu Manohar

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For respondents :: Mr.G.Sankaran, Spl.G.P.(Edn) for R1
Mr.V.Govardhanan for M/s.Row & Reddy for RR2 and 3 & also for Bharathidasan University
Mr.M.Sekar for Thiruvalluvar University, Bharathiar University and Periyar University
Mr.Kandavadivel Doraisamy for Madras University
Mr.N.R.Chandran, SC and Mr.R.Muthukumarasamy, SC for M/s.R.Suresh Kumar and P.D.Audikesavalu (Intervenor)
Mr.S.Sethuraman for Madurai Kamaraj University
Mr.P.R.Gopinathan, Standing counsel for NCTE, Bangalore.

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O R D E R

(ORDER OF THE COURT WAS MADE BY THE HONOURABLE THE CHIEF JUSTICE)

This case has been referred to the Full Bench as the Division Bench found that there is divergence of opinion and, particularly, the ratio of the Division Bench decision in The University of Madras vs Loordhu Ammal Educational Trust and another, 2005 W.L.R 395 cannot be reconciled with the decision of the other Division Bench in Vinayaka Missions College of Nursing and Para-Medical Sciences v. The Tamil Nadu Nurses and Midwives Council, 2006 (4) CTC 162.

2. The challenge in the present petition is to the order of the second respondent Manonmaniam Sundaranar University, dated 08.8.2007, by which the University has granted provisional affiliation to Rukmani College of Education started by the petitioner Trust for running B.Ed. Course with an intake of 100 students for the academic year 2007-2008. The petitioner has questioned the order of the second respondent University on the ground that the petitioner is entitled for grant of affiliation for B.Ed. Course from the academic year 2006-2007. The claim is made on the basis that the National Council for Teacher Education (hereinafter will be referred to as 'the NCTE', for brevity's sake), which is the competent authority to grant permission to start educational colleges, has granted permission vide order dated 06.10.2006 to run the B.Ed Course for the academic year 2006-2007. The petitioner Trust made an application for affiliation to the second respondent University on 31.10.2006, enclosing the approval order granted by the NCTE. Anticipating the grant of affiliation the petitioner admitted students for the academic year 2006-07. As per the statutes of the second respondent University relating to affiliation and approval of colleges and autonomous colleges, the

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procedure for granting affiliation is explained in Statute 21, which inter-alia reads as follows:-

> ''21. A College applying for affiliation or approval shall send a formal letter of application to the Registrar between the 1st July and 31st October proceeding the academic Year in which the courses are proposed to be started and shall give full information in the letter of application on the following matters:
> a to j. ..... ".

Statute 30 makes it clear that the affiliation or approval shall not be retrospective in the following terms:-

> ''30. Affiliation or approval shall in no case be granted with retrospective effect. Attendance at courses of instruction provided in colleges or in subjects before affiliation or approval is granted shall not qualify for the grant of certificates of attendance, and such attendance shall not entitled any candidate to exemption from the production of certificates of attendance."

By virtue of the aforesaid Statutes, since the petitioner Trust has applied for affiliation on 31.10.2006, it is entitled for grant of affiliation from the academic year 2007-2008 and, also due to the fact that the students admitted to the institution would not be in a position to complete the requisite number of term days, the second respondent granted provisional affiliation only from the academic year 2007-2008.

3. According to the petitioner, under the National Council for Teacher Education Act, 1993 (73 of 1993) (hereinafter, for brevity's sake, will be referred to as the 'NCTE Act'), the authority contemplated therein viz., NCTE has granted its approval for the academic year 2006-2007 in its order, dated 06.10.2006 and, therefore, the University was bound to grant affiliation for the same academic year and further according to the petitioner, once the NCTE has granted approval, the grant of affiliation by the University is only a formality and the University ought to have granted affiliation from the year 2006-2007. In support of these submissions, reliance has been placed on the decision of the Division Bench in Vinayaka Mission's College of Nursing and Para-Medical Sciences -vs- The Tamil Nadu Nurses and Midwives Council (supra), wherein, while referring to the provisions of the Indian Nursing Council Act, 1947, relating to affiliation of B.Sc., Nursing Course by the affiliating University, the Bench has taken a view that when once the Indian Nursing Council and the Tamil Nadu Nursing and Midwives Council had granted recognition for B.Sc., Nursing Course for the academic years 2002-2003, 2003-2004 and 2004-2005, it was the duty of the University to consider and grant affiliation for the academic years 2002-2003 and 2003-2004 and accordingly made directions. On the other hand, on behalf of the

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second respondent University reliance has been placed upon a decision in The University of Madras -vs- Loordhu Ammal Educational Trust (supra), where another Division Bench of this Court while dealing with similar circumstances of the present case, where the approval of the NCTE was obtained and thereafter anticipating affiliation from the University, the institution has admitted students, held that mere recognition by the NCTE will not amount to automatic grant of affiliation by the University and no college can claim affiliation as of right and it is only for the University in its discretion to grant affiliation or not and that admission of students before affiliation was granted by the University was wholly illegal. Reliance is also placed on the decision of the Supreme Court in A.P.Christians Medical Educational Society -vs- Government of Andhra Pradesh, 1986 (2) SCC 667, where the Supreme Court has held that the Court cannot direct the University to disobey the statutes to which it owes its existence and the regulations made by the University itself. In view of this apparent conflict of opinions about the role of University vis-à-vis the teacher training institutions, the Division Bench has referred this matter to the Full Bench.

4. We have heard Mr.P.Jayaraman, learned Senior Counsel appearing for the petitioner; Mr.G.Sankaran, learned Special Government Pleader (Education) appearing for the first respondent; Mr.V.Govardhanan, learned counsel appearing for respondents 2 and 3 i.e., Manonmanian Sundaranar University and its Controller of Examinations. Considering the importance of issues involved, notices were issued to all the concerned Universities as well as the NCTE and Mr.M.Sekar, Mr.S.Sethuraman, Mr.Kandavadivel Doraisamy, Mr.V.Govardhanan learned counsel appearing for various Universities and Mr.P.R.Gopinath, learned counsel appearing for the NCTE made their submission. Mr.N.R.Chandran and Mr.R.Muthukumarasamy, learned Senior Counsel appearing for the intervening institutions also made their submissions.

5. Mr.P.Jayaraman, learned senior counsel appearing for the petitioner contended that since the NCTE granted recognition by its order dated 06.10.2006 for the academic year 2006-2007, the University was bound to grant affiliation for the same academic year, in view of the mandatory provisions contained in Section 14 (6) read with Section 17 (3) and (4) of the NCTE Act. Learned counsel urged that in view of judgment of the Supreme Court in Union of India vs. Shah Goverdhan L.Kabra Teacher's College, 2002 (8) SCC 228 and in State of Maharashtra v. Sant Dnyaneshwar Shikshan Shastra Mahavidyalaya, 2006 (9) SCC 1, the field of Teacher Education is fully occupied by the NCTE Act enacted by the Parliament under Entry 66 List I and any encroachment made by any of the provisions of the relevant University Act shall be deemed to be inoperative. Learned senior counsel submitted that a teacher training institute is entitled to admit students immediately after recognition and that the restriction placed by the University Act and Statutes that the admission shall be made only after the affiliation is granted, is an encroachment into the occupied field of a Central Legislation. He also submitted that after the judgment of the Division Bench of this Court in Vinayaka Mission's College of Nursing and Para-Medical Sciences -vs- The Tamil Nadu

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Nurses and Midwives Council (supra), the University has no power to reject an application on the ground that it was made after a cut-off date or on the ground that it is belated, once the expert body under the Central Legislation had granted recognition.

6. Mr.N.R.Chandran and Mr.R.Muthukumarasamy, learned senior counsel appearing for the intervening institutions submitted that after the enactment of the NCTE Act, the NCTE is the final authority and has primary voice in establishing teacher training institutions. Learned counsel submitted that sub-section (6) of Section 14 of the NCTE Act expressly mandates the University to act in accordance with the directions of the NCTE and the University cannot over-look the statutory scheme. Therefore, when once the NCTE has made inspection and was satisfied that the necessary infrastructure was available and the institution would be able to conform to the required standards of education, the grant of affiliation is a mere consequence and no discretion is left to the University so far affiliation as is concerned. Heavy reliance was placed on the decision of the Supreme Court in State of Tamil Nadu v.Adhiyaman Educational and Research Institute, 1995 (4) SCC 104; Thirumuruga Kirupananda Variyar Thavathiru Sundara Swamigal Medical Educational & Charitable Trust -vs- State of Tamil Nadu, 1996 (3) SCC 15; and Jaya Gokul Educational Trust -vs- Commissioner of Secretary to Government, Higher Education Department, 2000 (5) SCC 231. A reference was also made to a Division Bench judgment of this Court in Bharathidasan University vs Dhanalakshmi Srinivasan Educational and Charitable Trust, 2005 (2) CTC 182, where the Bench held that a combined reading of Section 14(4) and 14(6) read with Section 16 of the NCTE Act obligates an affiliating body (University) to grant affiliation on receiving information as to recognition of an institution from the NCTE and leave no discretion to the affiliating body to stipulate any more condition, especially condition of obtaining prior permission from the State Government which would render the order of recognition ineffective.

7. In reply M/s. V.Govardhanan, M.Sekar, Mr.S.Sethuraman, Mr.Kandavadivel Doraisami, learned counsel appearing for respective Universities submitted that the educational institutions cannot admit students to B.Ed course unless affiliation has been granted by the University, and hence, until and unless, the University grants affiliation to the institution, it had no right at all to admit students to the course which would lead to conferring a University degree. Learned counsel submitted that the University before granting affiliation is entitled to be satisfied that the college seeking affiliation has proper facilities, competent and qualified teaching staff and no college can claim affiliation as a matter of right. Learned counsel placed heavy reliance on the judgment of the Division Bench of this Court in The University of Madras vs Loordhu Ammal Educational Trust and another(supra) and an unreported judgment of this Court (rendered by D.Murugesan, J) in Sree Arumugam Teacher Training College v. Thiruvalluvar University (W.P.Nos. 8685, 8687, 8869 and 8786/2006 dated 04.04.2006) and yet another unreported judgment of this Court (rendered by V.Ramasubramanian,J) in Annai JKK Sampoorani Ammal Charitable Trust v. Bharathiar University (W.P.No. 34923 of 2006 fated 22.10.2006). Reliance was also placed on a decision of the Division Bench of the

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Delhi High Court in Rahol Dhaka Vikas Society v. Guru Govind Singh Indra Prastha University and others , AIR 2001 (Del.) 154. It was, further, contended that it is not permissible for an unaffiliated institution to admit students and to permit such students to appear for the examination conducted by the University and then to compel the University to issue certificate in favour of those who have undertaken the examination. It was contended that the Supreme Court has repeatedly deprecated the practice of permitting the students to pursue their studies and to appear in the examination under the garb of interim orders passed in the petitions. In this connection, a reference was made to the judgment of the Supreme Court in Regional Officer, CBSE v. K.U.Sheena Peethambaran, 2003 (7) SCC 719. It was also submitted that the NCTE Regulations themselves provide for atleast 200 working days inclusive of period of examination and admission etc, and since the NCTE permission came only in October 2006, the students of the petitioner institution could not complete the term days, and therefore the decision of the University to grant affiliation only from the academic year 2007-2008 was perfectly in tune with the requirements of the NCTE Regulations.

8. Mr.P.R.Gopinathan, learned counsel appearing for the NCTE submitted that a teacher training institute is required to commence a course within the academic year specified by the concerned affiliating authority like Universities in cases of B.Ed. M.Ed., B.P.Ed., M.P.Ed., Courses and State Government for D.T.Ed., C.P.Ed., Pre-Primary etc. after obtaining Unconditional Recognition from NCTE. The University or affiliating authority is required to affiliate an institution for the academic year which is viable. If the academic year specified by the NCTE has already started before the institution obtained the recognition order, the affiliating body will decide on the matter whether to affiliate the institution in the running academic year if possible or for the next academic year. He submitted that as per the previous regulations, the last date for submission of application by the institutions was 31st December of ever year for the ensuing academic year, but after the regulations were revised the institutions can submit the applications to the NCTE throughout the year and the Regional Committee will process the applications throughout the year and it is for the concerned affiliating authority (University) to grant affiliation for the academic session, which is viable for offering the course.

9. Before we deal with the contentions of the parties, it would be appropriate if we refer to the relevant provisions of law of the Constitution delineating respective spheres of the Central and the State Legislatures. Entry 66 of List 1, i.e. the Union List of Seventh Schedule of the Constitution reads as follows:-

> ''66. Co-ordination and determination of standards in institutions for higher education or research and scientific and technical institutions."

This entry has remained unchanged since the inception of the Constitution. Before the Constitution (Forty-second Amendment) Act, 1976, which came into force with effect from 03.1.1977, Entry 11 in List II, i.e. the State List and Entry 25 in List III, i.e. the Concurrent List, were as follows:-

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''11. Education including universities subject to the provisions of entries 63, 64, 65 and 66 of List I and entry 25 of List III".

Before amendment, Entry 25 reads as follows:-

''25. Vocational and technical training of Labour."

After amendment, it reads as follows:-

''25. Education, including technical education, medical education and universities, subject to the provisions of Entries 63, 64, 65 and 66 of List I; vocational and technical training of labour".

10. The subject "co-ordination and determination of standards in institutions for higher education or research and scientific and technical institutions" has always remained the special preserve of Parliament. This was so even before the Forty-second Amendment, since Entry 11 of List II even then was subject, among others, to Entry 66 of List I. After the said Amendment, the constitutional position on that score has not undergone any change. All that has happened is that Entry 11 was taken out from List II and amalgamated with Entry 25 of List III. However, even the new Entry 25 of List III is also subject to the provisions, among others, of Entry 66 of List I. It cannot, therefore, be doubted nor is it contended before us, that the legislation with regard to co-ordination and determination of standards in institutions for higher education or research and scientific and technical institutions has always been the preserve of Parliament. What was contended before us was that once Parliament enacts a Legislation in respect to a particular field of education, the expert body constituted under the said Legislation shall have supremacy over the affiliating bodies like the Universities, which are created by the Acts of the Legislatures of the States and grant of affiliation would be a matter of mere formality. In order to appreciate the correctness of this contention, it is necessary to consider the relevant provisions of the NCTE Act and the Regulations framed thereunder.

11. The National Council for Teacher Education Act, 1993 (NCTE Act) has been enacted by Parliament and deals with teacher education. It came into force with effect from 01.7.1995. The Preamble of the Act is relevant and reads thus :-

''An Act to provide for the establishment of a National Council for Teacher Education with a view to achieving planned and coordinated development of the teacher education system throughout the country, the regulation and proper maintenance of norms and standards in the teacher education system and for matters connected therewith."

12. Section 2 is definition clause, wherein various terms have been defined. "Council" is defined as the National Council for Teacher Education established under sub-section (1) of Section 3 of the Act. "Institution" has been defined in Section 2(e) of the Act as "an institution which offers courses or training in teacher

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education". "Teacher Education" has been defined in section 2(l) thus :

> ''2(l) 'teacher education' means programmes of education, research or training of persons for equipping them to teach at pre-primary, primary, secondary and senior secondary stages in schools, and includes non-formal education, part-time education, adult education and correspondence education;"

Section 2(n) defines the term "university" thus:-

> ''university" defined under clause (f) of Section 2 of the University Grants Commission Act, 1956 and includes an institution deemed to be a university under Section 3 of that Act.

Chapter II provides for establishment of a Council and Chapter III deals with functions to be performed by the Council. Section 12 imposes duty on the Council to take necessary steps for ensuring planned and coordinated development of teacher education and for determination and maintenance of standards for teacher education.

13. Chapter IV is material and provides for recognition of teacher training institutions. Section 14 deals with recognition of institutions offering course or training in teacher education and reads as follows:-

> ''14 (1) Every institution offering or intending to offer a course or training in teacher education on or after the appointed day, may, for grant of recognition under this Act, make an application to the Regional Committee concerned in such form and in such manner as may be determined by regulations:
>
> Provided that an institution offering a course or training in teacher education immediately before the appointed day, shall be entitled to continue such course or training for a period of six months, if it has made an application for recognition within the said period and until the disposal of the application by the Regional Committee.
>
> (2) the fee to be paid along with the application under sub-section (1) shall be such as may be prescribed.
>
> (3) On receipt of an application by the Regional Committee from any institution under sub-section (1), and after obtaining from the institution concerned such other particulars as it may consider necessary, it shall,-
>
> (a) if it is satisfied that such institution has adequate financial resources, accommodation, library, qualified staff, laboratory and that

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it fulfills such other conditions required for proper functioning of the institution for a course or training in teacher education, as may be determined by regulations, pass an order granting recognition to such institution, subject to such conditions as may be determined by regulations; or

(b) if it is of the opinion that such institution does not fulfill the requirements laid down in sub-clause (a), pass an order refusing recognition to such institution for reasons to be recorded in writing:

Provided that before passing an order under sub-clause (b), the Regional Committee shall provide a reasonable opportunity to the institution concerned for making a written representation.

(4) Every order granting or refusing recognition to an institution for a course or training in teacher education under sub-section (3) shall be published in the Official Gazette and communicated in writing for appropriate action to such institution and to the examining body concerned, the local authority or the State Government and the Central Government.

(5) Every institution, in respect of which recognition has been refused shall discontinue the course or training in teacher education from the end of the academic session next following the date of receipt of the order refusing recognition passed under clause (b) of sub-section (3).

(6) Every examining body shall, on receipt of the order under sub-section (4), -

(a) grant affiliation to the institution, where recognition has been granted; or

(b) cancel the affiliation of the institution, where recognition has been refused."

14. Section 16 of the NCTE Act reads as follows:-

" 16. Affiliating body to grant affiliation after recognition or permission by the Council: -

Notwithstanding anything contained in any other law for the time being in force, no

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examining body shall, on or after the appointing day, -

(a) grant affiliation, whether provisional or otherwise, to any institution; or

(b) hold examination, whether provisional or otherwise, for a course or training conducted by a recognized institution,

Unless the institution concerned has obtained recognition from the Regional Committee concerned, under Section 14 or permission for a course or training under Section 15."

15. Sections 17(3) and 17(4) of the NCTE Act read as follows: -

"17. Contravention of provisions of the Act and consequences thereof: -- (3) Once the recognition of a recognized institution is withdrawn under sub-section (1), such institution shall discontinue the course or training in teacher education, and the concerned University or the examining body shall cancel affiliation of the institution in accordance with the order passed under sub-section (1), with effect from the end of the academic session next following the date of communication of the said order.

(4) If an institution offers any course of training in teacher education after the coming into force of the order withdrawing recognition under sub-section (1), or where an institution offering a course or training in teacher education immediately before the appointing day fails or neglects to obtain recognition or permission under this Act, the qualification in teacher education obtained pursuant to such course or training or after undertaking a course of training in such institution, shall not be treated as a valid qualification for purposes of employment under the Central Government, any State Government or University, or in any school, college or other educational body aided by the Central Government or any State Government".

16. Section 31 of the NCTE Act enables the Central Government to make rules to carry out the purpose of the Act. Likewise Section 32(1) of the Act empowers the Council to make regulations not inconsistent with the provisions of the Act and the rules made thereunder for the purpose of carrying out the provisions of the Act. In exercise of the powers conferred under sub-section (2) of Section 32 of NCTE Act, the National Council for Teacher Education has framed Regulations, known as, "The National Council for Teacher Education (Recognition, Norms and Procedure) Regulations, 2005". Further, by way of amendment, norms and standards have been prescribed for various teacher education programmes and the revised

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Regulations are now known as "National Council for Teacher Education (Recognition, Norms and Procedure) (Amendment) Regulations, 2006 (hereinafter, for brevity sake, will be referred to as '2006 Regulations').
Clause 2 of 2006 Regulation is material for our purpose and reads as follows:-

> ''2.0. Duration and working days.
> 2.1 Duration
> B.Ed. Programme shall be of a duration of at least one academic year.
> 2.2 Working Days
> There shall be at least 200 working days exclusive of period of examination and admission etc. out of which at least 40 days shall be for practice-teaching in about ten schools at upper primary/secondary/senior secondary level. A working day shall be of a minimum of 6 hours in a six-day week, during which physical presence in the institution of teachers and student-teachers is necessary to ensure their availability for individual advice, guidance, dialogues and consultation as and when needed."

17. Coming to the case law on issue, it is seen that in State of Tamil Nadu vs, Adhiyaman Educational and Research Institute (supra), the Supreme Court had an occasion to consider the role of the All Indian Council for Technical Education (AICTE) vis-à-vis the role of the University with regard to Entry 66 of the Union List and Entry 25 of the Concurrent List. After comparing the Central Act namely, the AICTE Act and the State Acts namely, the Tamil Nadu Private Colleges (Regulation) Act and the Rules framed thereunder and the Madras University Act, the Supreme Court found that there was a conflict between and overlapping of the functions of the AICTE and that of the University and therefore, to the extent of such inconsistency the provisions of the State Acts are inoperative. In paragraph-30 of the judgment, the Supreme Court sustained the role of the University insofar as the grant of affiliation is concerned in the following words: -

> " A comparison of the Central Act and the University Act will show that as far as the institutions imparting technical education are concerned, there is a conflict between and overlapping of he functions of the Council and the University. Under Section 10 of the Central Act, it is the Council which is entrusted with the power, particularly, to allocate and disburse grants, to evolve suitable performance appraisal systems incorporating norms and mechanisms for maintaining accountability of the technical institutions laying down norms and standards for courses, curricula, staff pattern, staff qualifications, assessment and examinations, fixing norms and guidelines for charging tuition fee and other fees, granting

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approval for starting new technical institutions or introducing new courses or programmes, to lay down norms or granting autonomy to technical institutions, providing guidelines for admission of students, inspecting or causing to inspect colleges, for withholding or discontinuing of grants in respect of courses and programmes, declaring institutions at various levels and types fit to receive grants, advising the Commission constituted under the Act for declaring technical educational institutions as deemed universities, setting up National Board of Accreditation to periodically conduct evaluation on the basis of guidelines and standards specified and to make recommendations to it or to the Council or the Commission or other bodies under the Act regarding recognition or de-recognition of the institution or the programme conducted by it. Thus, so far as these matters are concerned, in the case of the institutes imparting technical education, it is not the University Act and the University, but it is the Central Act and the Council created under which will have the jurisdiction. To that extent, after the coming into operation of the Central Act, the provisions of the University Act will be deemed to have become unenforceable in case of technical colleges like the engineering colleges. As has been pointed out earlier, the Central Act has been enacted by Parliament under Entry 66 of List I to coordinate and determine the standards of technical institutions as well as under Entry 25 of List III. The provisions of the University Act regarding affiliation of technical colleges like the engineering colleges and the conditions for grant and continuation of such affiliation by the University shall , however,remain operative but the conditions that are prescribed by the University for grant and continuance of affiliation will have to be in conformity with the norms and guidelines prescribed by the Council in respect of matters entrusted to it under Section 10 of the Central Act.

18. While summarizing the legal position, the Court observed in paragraph-41 of the judgment as follows: -

" (i).....
(ii).....
(iii).....

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(iv) Whether the State law encroaches upon Entry 66 of the Union List or is repugnant to the law made by the Centre under Entry 25 of the Concurrent List, will have to be determined by the examination of the two laws and will depend upon the facts of each case.

19. In Thirumuruga Kirupananda Variyar Thavathiru Sundara Swamigal Medical Educational & Charitable Trust -vs- State of Tamil Nadu (supra), the question was of repugnancy between the provisions of the Indian Medical Council Act, 1956 and the Tamil Nadu Medical University Act, 1987 renamed as Dr.M.G.R Medical University, Tamil Nadu (Amendment and Validation) Act, 1989. Section 10-A of the Indian Medical Council Act, as inserted by the Indian Medical Council (Amendment) Act, 1993, which was the Central Act enacted by Parliament, required permission for establishing new medical colleges in the country "notwithstanding anything contained" in the said Act or any other law for the time being in force. The proviso to sub-section (5) of Section 5 of the Dr.M.G.R.Medical University Act, however, prescribes that no college shall be affiliated to the University unless permission of the Government to establish such college has been obtained. In view of the proviso to sub-section (5) of Section 5 of the said Act , it was contended by the State Government that unless permission of the Government to establish new college had been obtained from the State Government, no medical college could be opened, even if such permission was granted by the Medical Council under the Central Act. Overruling the said objection, the Court held that by enacting Section 10-A, Parliament has made "a complete and exhaustive provision covering the entire field for establishing of new medical colleges in the country". No further scope is left for the operation of the State Legislation in the said field, which was fully covered by the law made by Parliament. The Court, therefore, held that the proviso to sub-section (5) of Section 5 of the said Act which required prior permission of the State Government for establishing a medical college was repugnant to Section 10-A of the Central Act and to the extent of repugnancy, the said Act would not operate.

20. In Jaya Gokul Educational Trust -vs- Commissioner of Secretary to Government, Higher Education Department (supra), the Supreme Court again reiterated the principles laid down in Adhiyaman Educational and Research Institute case. In that case, the appellant-trust which wanted to establish a self-financing engineering college had submitted an application to the University as well as to the AICTE. The appellant's application was rejected by the University for want of approval from the State Government. Allowing the appeal, the Supreme Court held that the AICTE Act occupied the field relating to the grant of approval for establishing educational institutions and consequently, the Kerala University Statute requiring approval of the State Government would be repugnant to the provisions of the AICTE Act and such provision would be void. It was held that the policy decision taken by the Government not to grant any affiliation to start private colleges

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is illegal and void. The State could not have any policy outside AICTE, and if it had a policy it should have been placed before the AICTE and that too before the latter granted permission. Once the procedure laid down by the AICTE Act and Regulations have been followed under Regulation 8(4) and the Central Task Force has given its favourable recommendation, there was no further scope for any more objection or approval by the State. In paragraph-30 of the judgment, the Court held that "the University should have acted on the basis of the permission granted by the AICTE and other relevant factors in the University Act or Statutes which are not inconsistent with the AICTE Act or Regulations." In other words, the Court not merely directed the University to go by the permission granted by the AICTE, but also take into account the other relevant factors in the University Act or Statutes which are not inconsistent with the AICTE Act or Regulations.

21. In none of these judgments, the Supreme Court has laid down that the grant of affiliation by the University is a matter of course or mere formality once the expert body set up by the Central Act had granted the permission. All the judgments of the Supreme Court arose out of a case where either the State Governments insisted upon the prior approval from them or the University Acts contained a provision for prior approval from the State Governments. In all the cases, the issue was only in regard to the requirement of 'no objection certificate' from the State Government and not with respect to the academic standards prescribed by the University.

22. The next decision cited on behalf of the petitioner in State of Maharashtra v. Sant Dnyaneshwar Shikshan Shastra Mahavidyalaya(supra) was a decision in respect of NCTE. The question had arisen in that case as to whether the State Government can refuse permission to an institution which had been granted permission to start B.Ed College under the NCTE Act and whether the policy decision of the State Government not to grant 'no objection certificate' would bind the NCTE in the light of the provisions of the NCTE Act. Following its earlier decisions in Adhiyaman Educational and Research Institute Case, Thirumuruga Kirupananda Variyar case and Jaya Gokul Educational Trust case, the Court concluded as follows: -

> " 63. In the instant case, admittedly, Parliament has enacted the 1993 Act, which is in force. The preamble of the Act provides for establishment of National Council for Teacher Education (NCTE) with a view to achieving planned and coordinated development of the teacher-education system throughout the country, the regulation and proper maintenance of norms and standards in the teacher-education system and for matters connected therewith. With a view to achieving that object, the National Council for Teacher Education has been established at four places by the Central Government. It is thus clear that the field is fully and completely occupied by an Act of

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> Parliamentand covered by Entry 66 of List I of Schedule VII. It is, therefore, no open to the State Legislature to encroach upon the said field. Parliament alone could have exercised the power by making appropriate law. In the circumstances, it is not open to the State Government to refuse permission relying on a State Act or on "policy consideration".

23. The ratio in the case of State of Maharashtra v. Sant Dnyaneshwar Shikshan Shastra Mahavidyalaya (supra) is entirely related to the insistence by the University for permission from the State Government to start a teacher training institute by taking recourse to Sections 82 & 83 of the Maharashtra Universities Act, 1984. In that case, the Supreme Court was not concerned with the statutes framed by the University for implementation of the academic standards or any other matter connected with the improvement of norms and standards in the field of teacher education. As a matter of fact, the Supreme Court did not agree with the observations made by the Division Bench of the Bombay High Court that the provisions of Sections 82 & 83 of the Maharashtra Universities Act which are inconsistent with the provisions of the NCTE Act are "null and void" and clarified that what the High Court wanted to convey was that the provision of Sections 82 & 83 of the said Act requiring approval from the State would not apply to the institution covered under Section 14(6) of the NCTE Act, and once recognition is granted under Section 14(6), the University is obliged to grant affiliation to such institution and Sections 82 & 83 of the Maharashtra Universities Act do not apply to such cases.

24. Insofar as the judgment of the Supreme Court in Union of India vs. Shah Goverdhan L.Kabra Teacher's College (supra) is concerned, the challenge before the Supreme Court was with regard to the validity of Section 17(4) of the NCTE Act on the ground that it affects the independence of the State Government to prescribe its own standards for employment to the said services. It was argued in the said case that Section 17(4) of the Act amounted to a law dealing with employment impinging upon the right of the State Government. Rejecting the argument, the Supreme Court held that the NCTE Act squarely fall under Entry 66 of List I and Parliament has legislative competence to enact the said Act.

25. Much reliance has been placed upon the judgment of the Division Bench in Bharathidasan University vs. Dhanalakshmi Srinivasan Educational and Charitable Trust (supra). Our attention was drawn to the following observations in para.24 of the judgment: -

> "24. ..... A combined reading of Sections 14(4), 14(6) read with Section 16 of the NCTE Act obligated the affiliating body to grant affiliation on receiving information as to recognition of an institution from the NCTE and thus leave no discretion to affiliating body to stipulate any more condition especially condition of imposing

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prior permission of the State Government which would render the order of recognition as ineffective. The scheme of the NCTE Act and the Regulations made thereunder as has been interpreted the various provisions of the NCTE Act and the Regulations made thereunder as held by the Supreme Court in St.John's Teacher Training Institute -vs- Regional Director, 2003 (3) SCC 321, wherein it was held that the Regional Committee of NCTE is empowered to consider the claim for recognition independently notwithstanding the refusal of NOC by the State Government. Once the recognising body held that the refusal of NOC by the State Government would not stand in the way of granting recognition, it would be ex-facie illegal to insist very same rigour condition for granting of affiliation by one of the agencies, namely, Universities under the NCTE Act. We are satisfied that the NCTE Act contained enough provisions pertaining to granting of affiliation and that the action of the Writ Appellant University in imposing a pre-condition of prior permission from the State Government as indicated in the impugned order constitutes error of law, arbitrary and opposed to the object and scheme of the NCTE Act besides being opposed to the law declared by the Supreme Court. As explained earlier, the provisions contained in Sections 14(4); 14(6) and 16 of the NCTE Act is wider in scope than Section 10(k) of AICTE Act and Section 10-A of Indian Medical Council Act inasmuch as the NCTE Act takes in its fold the matter of granting affiliation. Further, the NCTE Act contains adequate provisions as regards granting of affiliation as automatic one in respect of institutions which have been granted with recognition by the NCTE. Hence, the contention of the writ appellants that the provisions of the State Enactment is only a supplemental and not supplant to the Central Act cannot be accepted. The contention that NCTE Act deals with recognition only and not establishment of institution etc. have no substance for the reasons stated supra as also on the ground that the word, 'recognition' as employed in NCTE Act and 'approval' as mentioned in Section 10(k) of the AICTE Act and 10-A of the Indian Medical Council Act would give the same meaning in legal parlance having regard to the object of those provisions contained in

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the respective enactment. The argument that rule 2(b) of the Tamil Nadu Private Colleges (Regulation) Act includes teacher training colleges and, hence, the impugned condition is justified is liable to be rejected on the grounds that Rule cannot over-ride the provisions of the Act and that the State cannot enact law repugnant to the provisions contained in the Central Act as has been repeatedly held by the Supreme Court of India. As rightly pointed out, the University is one of the agencies under the NCTE Act and is obligated to grant affiliation on receipt of order of recognition in respect of any technical institution in terms of Section 14(4) read with Section 14(6) of the NCTE Act. Though it is stated that the function of granting affiliation is legislative in nature and the same cannot be abdicated to outside agency. In the instant case, a perusal of the impugned order discloses that the same came to be passed on the basis of the resolution of the Syndicate which in turn rely on the provisions contained in the Tamil Nadu Private Colleges (Regulation) Act, ignoring the express provisions viz., Sections 14 (4), 14(6) of the NCTE Act."

26. In Bharathidasan Univeristy's case, the only issue which fell for consideration of the Division Bench was whether the learned single Judge was right in directing the University to consider the application submitted by the petitioner institution for grant of affiliation to its teacher training course without insisting on the production of 'no objection certificate' from the Government. The Division Bench following the judgments of the Supreme Court in Adhiyaman Educational and Research Institute Case, Thirumuruga Kirupananda Variyar case and Jaya Gokul Educational Trust case held that the University cannot insist upon 'no objection certificate' from the State Government. Therefore, the judgment in Bharathidasan University's case has to be understood only in the context of the condition imposed by the University for obtaining 'no objection certificate' from the State Government. No objection certificate alone was held to be repugnant to the NCTE Act and nothing more can be read into the judgment of the Division Bench so as to affect the role of the University insofar as the maintenance of norms and standards in teacher training institutions are concerned.

27. In Vinayaka Missions College of Nursing and Para-Medical Sciences v. The Tamil Nadu Nurses and Midwives Council (supra), the appellant after taking prior permission from the Pondicherry Government vide agreement dated 26.06.2002 took over the control of the management of RM College of Para-Medical Sciences to impart education in various para-medical courses including B.Sc (Nursing) comprising of degree, diploma and certificate courses. On

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03.07.2002, the appellant wrote to the first respondent-University about the said fact of obtaining permission for taking over from the Government of Pondicherry and requested for grant of affiliation for various para-medical courses run by the said RM Para-Medical Courses, which the appellant-trust has taken over in the name of "Vinayaka Missions College of Nursing and Para-Medical Sciences. It appears that without waiting for grant of affiliation the management proceeded to conduct various courses including B.Sc (Nursing) degree course and students have been admitted from July 2002 for the academic year 2002-2003. The Indian Nursing Council and the Tamil Nadu Nurses and Midvives Council granted recognition for the B.Sc (Nursing) degree course for the academic years 2002-2003, 2003-2004 and 2004-2005. However, the first respondent University failed to process the application for affiliation, which resulted in appellant making representations to the University. However, the University refused to pass any order on the request for affiliation to the appellant-nursing college. The management then filed a writ petition seeking writ of mandamus directing the first respondent-University to grant affiliation for the academic years 2002-2003, 2003-2004 and 2004-2005. A counter-affidavit was filed by the first respondent-University in which it was stated that taking note of the time frame under which the institution had approached the University for grant of affiliation and with reference to the relevant regulation, more particularly clause 5(a) of the Academic Ordinance under the Pondicherry University Act, 1985, the appellant trust was informed that its application for affiliation could be considered only for the academic year 2003-2004, subject to the petitioner being able to provide the approval of competent authority before the end of May 2003 and 'no objection certificate' from the Government of Pondicherry. A second writ petition was filed by the appellant trust to quash the order dated 07.02.2006 passed by the Tamil Nadu Nurses and Midvives Council wherein the appellant was directed to handover the students' original certificates and other documents, files, registers, records and communication pertaining to these students to be allotted to other institutions. The Division Bench relying upon the judgment in Bharathidasan University v. Dhanalakshmi Srinivasan Educational and Charitable Trust (supra) and certain orders passed in other cases, held that the first respondent University is duty bound to consider the request of the appellant for grant of affiliation, otherwise the grant of recognition by the competent authorities will be set at naught and directed the first respondent University to consider the request of the appellant for grant of affiliation for the academic years 2002-2003, 2003-2004 after making necessary inspection. A cursory reading of the judgment of the Division Bench would show that the controversy arose due to the persistent blind refusal by the Pondicherry University to grant affiliation for years together. Hence, the said judgment has to be understood only in the context of reasons stated in the impugned order in the said case. However, we do not agree with the broad proposition laid down by the Division Bench that when the Central Council granted recognition, the University was bound to accede to the request of the institution to grant affiliation mechanically or automatically.

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28. In University of Madras v. Loordhu Ammal Educational Trust and another(supra), NCTE having been satisfied with the requirements and other facilities and amenities provided by the first respondent-trust i.e., original writ petitioner has granted approval of the writ petitioner institution by order dated 2.11.2004 for a sanctioned strength of 100 seats for the academic year 2004-2005 under the NCTE Act. The writ petitioner having got approval from the NCTE, applied for affiliation with the Madras University on 03.11.2004. The University issued an order dated 22.11.2004 directing the writ petitioner institution to obtain 'no objection certificate from the Government of Tamil Nadu, so as to enable the University to take further action in the matter of granting affiliation, and it further directed not to conduct classes without provisional affiliation. The writ petitioner challenged the said order, dated 22.11.2004 in W.P.No.34823 of 2004 and the same was allowed by the learned Single Judge, who held in his judgment that the impugned order of the University insisting prior permission of the State Government for grant of affiliation cannot be sustained and set aside the same and further directed the respondent University to consider the application of the writ petitioner for grant of affiliation for B.Ed. Degree Course for the Academic Year 2004-2005 without reference to the prior permission from the State Government. In the meantime, the writ petitioner admitted students and conducted classes allegedly to fulfill the requisite number of attendance prescribed by the University. It was alleged that the students of the writ petitioner's institution have completed necessary training/coaching classes and are fully equipped to appear for the examination scheduled to be held on 20.4.2005. The question before the Court was whether the writ petitioner institution was justified in admitting the students to B.Ed. Course since affiliation has not been granted to it by the Madras University, and whether the grant of affiliation by the University was only a formality. Markandey Katju, J (as he then was) speaking for the Bench observed: -

> "15. We cannot accept the submission of the learned counsel for the first respondent that merely because recognition to the college has been granted by NCTE, affiliation must necessarily be granted by the Madras University. Since the degree which would be granted will be that of Madras University obviously the Madras University, before granting affiliation, would like to be satisfied that the college seeking affiliation has proper facilities, competent and qualified teaching staff, etc.
>
> 16. Every University has got certain reputation, which it naturally wants to be protected and upheld. It is for this reason that before grant of affiliation, Universities make inspection, enquiry etc. about the college seeking affiliation.
>
> 17. .....
>
> 18. We are of the opinion that any college or institution admitting students

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for a degree in a University even before the University accords it affiliation is really committing fraud on those students and is cheating those students who are given admission, because those students can be left in the lurch if ultimately affiliation is not granted.

19. In our opinion, no college can claim affiliation as of right. It is only for the University in its discretion to grant affiliation or not. This Court cannot arrogate to itself the powers to grant affiliation, nor can it direct the University to grant affiliation. An act which the statutory authority has to do cannot be done by this Court, and this Court must exercise restraint in this connection."

29. The writ petitioner sought review of the order and the review application was based on the decision of the Division Bench in Bharathidasan University v. Dhanalakshmi Srnivasan Educational and Charitable Trust (supra) and reliance was particularly placed on the following observation of the Division Bench: -

"Further the NCTE Act contains adequate provisions as regards granting of affiliation as automatic one in respect of institutions which have been granted with recognition by the NCTE."

The Division Bench dismissing the review application reported in 2005 (2) CTC 513 (Loordhu Ammal Educational Trust v. The University of Madras) observed as follows: -

"4. In our opinion, the word 'automatic' used in the aforesaid judgment should not be treated to mean that the Madras University must blindly grant affiliation whenever an order of recognition by NCTE under the NCTE Act, 1993 is produced before it. No doubt Section 14 (6) says that the examining body, on receipt of the order under sub-section (4) of Section 14, shall grant affiliation to the institution where recognition has been granted. However, this does not mean that as soon as an order of recognition from the NCTE is produced before the University it must close its eyes and straightaway grant affiliation.

5. In our opinion, when a recognition order of NCTE is produced before the University, the University can make a limited enquiry as to whether the Regional Committee before granting recognition followed the provisions of Section 14(3)(a) of the NCTE Act, which states:

''On receipt of an application by the Regional Committee from any institution under sub-section (1), and after obtaining

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from the institution concerned such other particulars as it may consider necessary, it shall -
(a) if it is satisfied that such institution has adequate financial resources, accommodation, library, qualified staff, laboratory and that it fulfills such other conditions required for proper functioning of the institution for a course or training in teacher education, as may be determined by regulations, pass an order granting recognition to such institution, subject to such conditions as may be determined by regulations."

6. It must be understood that a University is a centre of higher learning and naturally has to maintain its reputation and it will like to grant affiliation only to a college which has the proper facilities, qualified staff, financial resources, etc.

7. We may take a hypothetical case. Supposing a college which does not have the adequate facilities, qualified staff, financial resources etc. by manipulation or some fraud obtains a recognition certificate from the NCTE even though the procedure under Section 14(3)(a) has not been followed, and then it applies for affiliation to the Madras University, does not mean that the Madras University must close its eyes and even without making any enquiry on its own whether Section 14(3)(a) was complied with must straightaway grant affiliation? Madras University is a prestigous university which has produced outstanding scholars who have created a mark all over the world and we cannot accept the contention that Madras University must blindly grant affiliation just because the recognition certificate by NCTE is produced before it. Of course, if in the limited enquiry as to whether before granting recognition the Regional Committee had followed the procedure mentioned in Section 14(3)(a), the Madras University is satisfied that it was followed, then Madras University will have to grant affiliation, but it can certainly make this limited enquiry before doing so. After all, the degree which will be granted will be of Madras University."

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30. A somewhat similar issue fell for consideration of the Division Bench of the Delhi High Court in Rahul Dhaka Vikas Society v. Guru Govind Singh IndraPrastha University and others (supra). In the said case, the petitioner therein was granted recognition by the NCTE. Though Guru Govind Singh University was provisionally granted affiliation for the academic year 1999-2000, the University refused to continue the affiliation for the year 2000-2001. The refusal of the University to extend the affiliation was challenged on the ground that once the NCTE has granted recognition, the University cannot refuse affiliation. The argument in the said case was based on the language used in Section 14(6) of the NCTE Act with particular emphasis on the word 'shall' appearing in Section 14(6). Rejecting the argument, the Division Bench of the Delhi High Court held as follows; -

> " 11. It is, keeping in view the provisions of the Indraprastha Vishwavidyalaya Act, 1998 that provisions of Section 16 of the NCTE Act are to be given an interpretation. If the interpretation as suggested by Institute is given, following would be the consequences:
>
> a) Grant of recognition would mean grant of automatic affiliation with any University.
> b) Depriving the University of its power to give affiliation or refuse affiliation.
> c) Possessed with the order of recognition and institution can go to any University for affiliation.
>
> In other words, it would be the sole prerogative of the institution to decide the University with which it wants to be affiliated and such University has no choice but to grant affiliation.
>
> d) University will have to grant affiliation even if the particular institution does not conform to the standards or meets the requirements of the Act, Statutes, Ordinances and Regulations of that University.
>
> 12. Naturally, such an interpretation as suggested by the Institute which leads to the aforesaid appalling and blighting consequences and may have the effect of destroying the very autonomy of an University and may give licence to an institution to violate the provisions of the Acts, Statutes, Ordinance etc. of the University with impunity, cannot be accepted. Merely because the NCTE Act is a Central Statute, does not mean that it has to be interpreted in a manner which destroys the very fabric and edifice of the University. Therefore need is to interpret the provisions of the two Acts, one Central and other State, harmoniously so that both

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are able to survive in their respective fields and also able to achieve their respective objections. It is only when the provisions of the State Act are repugnant to that of Central Act that the provisions of State Act have to give way to the provisions of Central Act. Article 254 of the Constitution of India deals with the situation where there is inconsistence between laws made by the parliament and laws made by the legislatures of States interpreting the principle of repugnancy contained in this Article, following principles can be culled out from various judgments: -

1. The State law does not become void and soon as the Union Parliament legislates with respect to the same subject. There is nothing to prevent the State Legislature to legislate with respect to a Concurrent subject merely because there is a Union law relating to the same subject. Article 254(2) is attracted only if the State law is 'repugnant' to the Union Act, which means that the two cannot stand together. The doctrine of 'occupied field' has no application in the interpretation of the present Article.

2. There is no question of applying Article 254, unless the State law is, in its 'pith an substance' a law relating to the Concurrent List. If it is covered by an Entry in the State List, but only touches the Concurrent List incidentally, there is no application of Article 254.

3. The onus of showing the 'repugnancy' and the extent thereof is on the party who attacks the validity of the State law."

14. ..No doubt once the word 'shall' is used in a provision, it raises a presumption that the particular provision is mandatory. However, this prima facie interference may be rebutted by other considerations such as object and scope of the enactment and the consequence flowing from such construction. Keeping in view this consideration, we are of the opinion that the word 'shall' occurring in sub-section (6) of Section 14 should be construed as merely directory and not mandatory as the context and the intention of legislature demands this construction. Instances are not lacking where Courts have given such interpretation to the word 'shall' appearing in the provisions of a Statute by carefully attending to the whole scope of the Statute"

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> 15. … Therefore normally affiliation should not be refused on the grounds which are covered by Section 14(3) of the NCTE Act and Council has already satisfied itself that the Institute meets these requirements. However, this would not be an absolute rule and the University shall still have the right to satisfy itself about the fulfillment of conditions for affiliation by the Institute in accordance with its Act, Statutes, etc. But if the affiliation is refused on any of these grounds, it will be for the University to justify its decision that notwithstanding the 'recognition' by the Council, the institution lacked any of the aforesaid facilities and the council had not acted properly in granting the recognition. Moreover, apart from the considerations mentioned in Section 14(3) of the NCTE Act, there may be other valid considerations which may compel the University to still refuse affiliation. After all it is the University which confers the degree. It is the credibility, reputation or the goodwill of the University which is at stake"

31. In the case of Annai J.K.K.Sampoorni Ammal Charitable Trust vs. Bharathiayar University (supra), the NCTE granted recognition to the petitioner institution vide order dated 01.04.2006 to start B.Ed degree course for the academic year 2005-06 and the State Government also issued no objection certificate on 01.03.2006 for the same academic year 2005-2006. But on the application dated 05.01.2006 submitted by the petitioner for grant of affiliation, the University vide its order dated 18.04.2006 granted affiliation only for the academic year 2006-2007 on the short ground that there would be lack of adequate term days for the academic year 2005-2006. The argument of the petitioner was that since the NCTE had granted recognition for the academic year 2005-2006, the University is obliged to simply follow suit, on account of the clear mandate of Section 14(6) of the NCTE Act and that it "shall grant affiliation". Following the decision of the Division Bench in The University of Madras vs Loordhu Ammal Educational Trust and another (supra), and that of the Division Bench judgment of the Delhi High Court in Rahul Dhaka Vikas Society v. Guru Govind Singh IndraPrastha University and others (supra) V.Ramasubramanian, J held as follows: -

> " 18. A combined reading of Sections 14(6), 16, 17(3) and 17(4) shows that what is primarily required by NCTE Act, 1993 is that the National Council and the University should act in tandem and not at a tangent. The plain and simple message that is sought to be conveyed by these Sections of the NCTE Act, 1993, is that the

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University shall grant affiliation only if NCTE grants recognition and shall refuse affiliation if NCTE refuses recognition. Similarly, if NCTE withdraws recognition, the University shall also withdraw affiliation and the qualification acquired from an unrecognized institute shall not be treated as a valid qualification for employment in any State or Central Government or Government Body. In other words, the decision of the University to grant or not to grant or to withdraw affiliation, should coincide with the decision of the NCTE to grant or not to grant or to withdraw recognition.What is actually sought to be achieved by Sections 14(6), 16 , 17(3) and 17(4) of NCTE Act, 1993 is an identity of mind and uniformity of objective to ensure that there is proper maintenance of norms and standards, as spelt out in the Statement of Objects and Reasons. The same cannot be stretched to such an extent, as to make affiliation, a mere counterfoil to an order of recognition.

19. The object of the above provisions of NCTE Act, 1993 is only to ensure coordination and co-existence with mutual respect between NCTE and the affiliating University and I am unable to see any intention on the part of the Parliament, to dwarf the Universities, by incorporating these Sections, in NCTE Avt, 1993.

……..

…….

30. If we do not loose track of the objects for which NCTE Act was enacted, we would find that any provision contained in the University Act that would improve the norms and standards of teacher education, cannot be held to be repugnant to the NCTE Act. If by applying the doctrine of pith and substance, we find that a particular provision in the University Act is intended for improving the quality of teacher education, it should be taken as subservient to the cause sought to be achieved by NCTE and not subversive of the objects sought to be achieved.

31. Applying the above test, I find that the insistence by University for a particular number of term days, is only to improve the quality of education and hence it cannot be taken to be an encroachment into a field occupied by NCTE Act, 1993.

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46. There can be no dispute that the NCTE itself is concerned with a particular number of term days, which is referred to in Appendix-7 Clause 4 under Regulation-8 of NCTE Regulations 2002 as "at least 150 teaching days in a year". This prescription is in addition to an internship in teaching for at least 30 days. Therefore, it is clear that NCTE also wants the candidates admitted to teacher training institutions to undergo the curriculum for a prescribed number of days. What is referred to in NCTE Regulations as "teaching days" is referred to as "term days" by the University. Hence the concern expressed by the University under the impugned order that the students of the petitioner-institution may not be able to complete the term days, is perfectly in tune with the requirement under NCTE Regulations 2002.

32. In Sree Arumugam Teacher Training College vs. Thiruvalluvar University, W.P.Nos. 8685, 8687, 8869 and 8186 of 2006 dated 4.4.2006, D.Murugesan, J considered the effect of Clause 46 Chapter XXVI of the Statutes of the Madras University and held that there cannot be any retrospective affiliation and that the attendance before affiliation would not be taken into consideration. In para.12 of the said judgment, the learned Judge referred to the provisions of Section 14 of theNational Council for Teacher Education and held as follows: -

" 12. The power to grant recognition to start Teacher Training Course including the degree level shall vest only with the National Council for Teacher Education (in short NCTE). The National Council for Teacher Education Regulations and the conditions on which the recognition is granted in terms of Section 14(1) of the National Council for Teacher Education Act are binding on the institutes availing such recognition. Condition no.3(a) of the conditions of recognition contemplates that the institution shall ensure that eight exclusive faculty members duly approved by the affiliating University are in a position for an intake of 100 students and a report to this effect shall be sent to the Southern Regional Committee immediately and in any case before the commencement of admissions for the course. A plain reading of the above condition shows that before admission to the course is commenced, the institution should get the approval of the affiliating University as to the faculty members. The

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fact of approval shall be communicated to the NCTE by the colleges by way of reports. Unless these two conditions are complied, the institution cannot admit the students. Condition no.4 further contemplates that the recognition is subject to the fulfillment of all such other requirements as may be prescribed by other regulatory bodies like the State Government, etc. So far as the grant of affiliation is concerned, the respondent university is alone empowered. The grant of affiliation entitles the colleges not only to admit the students but also enables the students so admitted to write the examination subject to the training in the prescribed syllabi and fulfilling the attendance norms. If both the condition nos. 3(a) and 4 are read together, it is obvious that even as per the conditions of recognition, no student can be admitted before the approval of the faculty members and a report to that effect is sent to the NCTE, and further no student would be entitled to write the examination unless he/she earns the minimum attendance as per the norms. As per condition no.4, grant of affiliation is also one of the requirements and without which a mere attendance in the class without there being a conferment of degree would be of no use."

44. Again in paragraph-14 of the judgment, the learned Judge held as follows: -

" A mere grant of recognition or NOC would be of no use as students cannot be imparted training and consequently, obtain degree in the absence of affiliation. A University which is obligated to its statutes shall ensure as to whether the students had put in minimum attendance and had undergone the course in the prescribed syllabi and had been imparted training by qualified teachers before allowing such students to write the examination. It would be only in conformity with the regulations of the University if the attendance secured by students, after the affiliation was granted is taken into consideration to arrive the minimum required number of days to write the examination. Any other conclusion shall not be in tune to the object requiring affiliation from the University for registering the candidates to write the examination"

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33. The same view has been taken by one of us (Prabha Sridevan, J) in W.P.Nos. 45461 and 45462 of 2006 dated 28.2.2007 (Tvl.Aruna Malai College of Education v. Secretary to Government and others).

34. In Regional Officer, C.B.S.E vs. KU.SheemaPeethambaran (supra) the Supreme Court has deprecated the practice of permitting the students of unaffiliated institutions to pursue their studies and to appear in the examination under the interim orders passed in the petitions. The following observation in para.6 are extremely important: -

> "6. This Court has on several occasions earlier deprecated the practice of permitting the students to pursue their studies and to appear in the examination under the interim orders passed in the petitions. In most of such cases it is ultimately pleaded that since the course was over or the result had been declared, the matter deserves to be considered sympathetically. It results in very awkward and difficult situations. Rules stare straight into the face of the plea of sympathy and concessions, against the legal provisions. A few decisions on the point may be perused. In C.B.S.E. -vs- P.Sunil Kumar (1998) 5 SCC 377), the institutions whose students were permitted to undertake the examination of the Central Board of Secondary Education were not affiliated to the Board, hence the students were not entitled to appear in the examination. They were, however, allowed to appear in the examination under the interim orders granted by the Court in contravention of the rules and regulations of the Board. The High Court considering the matter sympathetically had not interfered, but this Court observed thus: (SCC p.381, para 4):-
>
> ''But to permit students of an unaffiliated institution to appear at the examination conducted by the Board under orders of the Court and then to compel the Board to issue certificates in favour of those who have undertaken examination would tantamount to subversion of law and this Court will not be justified to sustain the orders issued by the High Court on misplaced sympathy in favour of the students".
>
> The order of the High Court was set aside. Another decision reported in Guru Nanak Dev University -vs- Parminder Kr.Bansal ((1993) 4 SCC 401), a three-Judge Bench decision, was relied upon in the case of Sunil Kumar ((1998) 5 SCC 377). A passage

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from the above noted decision was also quoted therein which reads as follows:- (SCC p.403, para 7).

''We are afraid that this kind of administration of interlocutory remedies, more guided by sympathy quite often wholly misplaced, does no service to anyone. From the series of orders that keep coming before us in academic matters, we find that loose, ill-conceived sympathy masquerades as interlocutory justice exposing judicial discretion to the criticism of degenerating into private benevolence. This is subversive of academic discipline, or whatever is left of it, leading to serious impasse in academic life. Admissions cannot be ordered without regard to the eligibility of the candidates. Decisions on matters relevant to be taken into account at the interlocutory stage cannot be deferred or decided later when serious complications might ensue from the interim order itself. In the present case, the High Court was apparently moved by sympathy for the candidates than by an accurate assessment of even the prima facie legal position. Such orders cannot be allowed to stand. The courts should not embarrass academic authorities by themselves taking over their functions."

Yet another decision referred to is reported in A.P.Christians Medical Educational Society -vs- Government of Andhra Pradesh ((1986) 2 SCC 667), again a three-Judge Bench decision. It was observed in this case: (SCC p.678, para 10):

''We cannot by our fiat direct the University to disobey the statute to which it owes its existence and the regulations made by the University itself. We cannot imagine anything more destructive of the rule of law than a direction by the court to disobey the laws."

The above-referred matter relates to the admission and examination of MBBS courses.

7. In the background of the law as laid down by this Court, we find that in the case in hand the fact situation was even worse as compared to the decision cited above. The student, namely, Respondent 1 had failed to clear her Class IX examination which was a necessary requirement as provided under the bye-laws of the Board so as to be entitled to appear in Class X examination conducted by the Board. Despite notice, no one has put in appearance on

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behalf of Respondents 1 and 2 to indicate any fact or circumstance so as to take any different view. Condoning the lapses or overlooking the legal requirements in consideration of mere sympathy factor does not solve the problem, rather breeds more violations in the hope of being condoned. It disturbs the discipline of the system and ultimately, adversely affects the academic standards."

35. We have considered the provisions of the relevant statutes and the decided cases. In our opinion, it is impossible to accept the submission of the learned counsel appearing for the Institution that merely because the recognition to the institution has been granted by the NCTE, affiliation must necessarily be granted by the University. If the interpretation as suggested by the Institution is given, it would only mean that the University has to grant affiliation even if the particular institution does not conform to the standards or does not meet the requirements of the Act, Statutes, Ordinances and Regulations of the University and may have the effect of destroying the very autonomy of the University. Merely because the NCTE Act is a Central Statute it does not mean that it has to be interpreted in a manner which destroys the very fabric and edifice of the University. Therefore, there is a need to interpret the provisions of the Central Act and the State Act, harmoniously so that both are able to survive in the respective fields and also able to achieve their respective objectives. No doubt, Section 14(6) says that the University, on receipt of the order under sub-section (4) of Section 14 of the NCTE Act, shall grant affiliation to the institution where recognition has been granted. However, this does not mean that as soon as the order of recognition from the NCTE is produced before the University, it is bound to close its eyes and straightaway grant affiliation. It would only mean that normally affiliation should not be refused on the ground which are covered by Section 14(3) of the NCTE Act, as the Council has already satisfied itself that the institute meets these requirements. However, this would not be an absolute rule and the University can make a limited enquiry as to whether the institution has proper facilities, competent teaching staff, etc. in consonance with Section 14(3) of the NCTE Act. If it is found that the college does not have the adequate facilities, qualified teaching staff, adequate financial resources, etc. or permission has been obtained by deception or fraudulent means, it would be open for the University to refer the matter to the NCTE for appropriate action. After all it is the University which confers the degree. It is the credibility, reputation or goodwill of the University which is at stake. Therefore, in our opinion, no institution can claim affiliation as a matter of right.

36. The NCTE Act has been enacted by Parliament under Entry 66 of List I to coordinate with and determine the standards of teacher training institutions as well as Entry 25 of List III. The provisions of the University Act regarding affiliation of teacher training colleges and the conditions for grant and continuation of such affiliation by the University shall remain operative. However,

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the conditions that are prescribed by the University for grant and continuation will have to be in conformity with the norms and guidelines prescribed by the NCTE in respect of the matters entrusted to it under the NCTE Act. We hasten to add that the grant of affiliation alone entitles the colleges to admit the students and also enables the students to write the examination, subject to the training in the prescribed syllabi and fulfilling the attendance norms, and there cannot be any retrospective affiliation and the attendance before the affiliation would not be taken into consideration. No institution or college is entitled to admit students before the grant of affiliation by the University, and as observed by the learned Chief Justice in Loordhu Ammal Educational Trust's case, that any college or institution admitting students for a degree in the University even before the University accords affiliation is really committing fraud on those students and is cheating those students who are given admission, because those students can be left in the lurch if ultimately affiliation is not granted. We may add that it would be impermissible for the Court to permit the students of an unaffiliated institution to appear for the examination conducted by the University under the interim orders of the Court or to direct the University to grant affiliation with retrospective effect, as it would amount to directing the University to disobey the statute to which it owe its existence and the regulations made by the University itself.

37. We have already noted that the NCTE in exercise of its power under Section 32(2) of the Act has framed National Council for Teacher Education (Recognition, Norms and Procedure) (Amendment) Regulations, 2006. Clause 2 of the amended Regulation prescribes that there should be at least 200 working days exclusive of the period of the examination and admission etc. out of which at least 40 working days for practical teaching in about 10 schools at upper primary/secondary/senior secondary level. Therefore, it is clear that the NCTE wants the candidates admitted to teacher training institutions to undergo their curriculum for a prescribed number of days. In the present case, the affiliation came to be granted by the NCTE in October, 2006 and only thereafter, the application for affiliation was moved by the institution. Considering the requirement of 200 working days and 40 days for examination etc. it was impossible for the University to grant affiliation for the academic year 2006-2007, and therefore the University has rightly granted affiliation for the ensuing academic year 2007-2008. Mr.P.R.Gopinathan appearing for NCTE has also fairly conceded that the University or affiliating authority is required to affiliate an institution for the academic year, which is viable in the light of the regulations framed by the NCTE.

38. The NCTE, pursuant to the queries made by this court, has placed on record a clarificatory note of the Regional Director of NCTE, dated 04.10.2007, and the same is reproduced below:-

1. The NCTE has revised the regulations which came into effect from 13.01.2006. As per the new regulations, NOC from the concerned State Governments is not required to obtain by the institutions for submission of

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application to NCTE. On receipt of the application from the institutions, the SRC-NCTE will process the applications and a deficiency letters will be issued to the institutions for submission of essential documents required for further processing of application. On satisfactory submission of the essential documents by the institution, a copy of the application will be sent to the State Governments concerned by NCTE seeking recommendation. If the recommendation is negative, the State Government/UT Administration shall provide detailed reasons/grounds thereof, which could be taken into consideration by the Regional Committee concerned while deciding the application. If no communication is received from the State Government/UT Administration within the stipulated 60 days, it shall be presumed that the State Government/UT Administration concerned has no recommendation to make. However, the application will be processed and appropriate orders will be passed.

2. The institutions should commence the Course well within the academic Year specified by the concerned affiliating authority like Universities in cases of B.Ed. M.Ed., B.P.Ed., M.P.Ed., Courses and State Government for D.T.Ed., C.P.Ed., Pre-Primary etc. after obtaining Unconditional Recognition order from NCTE.

3. As per Section 16 of the NCTE Act, 1993, the affiliating body shall affiliate such institutions who have obtained Recognition from NCTE under Section 14 or 15 of the NCTE Act, 1993. Whereas, the University or affiliating authority will affiliate a institution for the academic year which is viable. If the academic year specified by the affiliating body has already started before the institution obtained the recognition order, the affiliating body will decide on the matter whether to affiliate the institution in the running academic year if possible or for the next academic Year.

4. Yes, the academic year of the NCTE means the academic year prescribed by the concerned affiliating University or affiliating body.

5. As per the previous regulations, the last date for submission of applications by the institutions was 31st December of every year for the ensuing academic session. After the regulations were revised with effect from 13.01.2006, the last date of application was waived off and the institutions can submit application to NCTE throughout the year and

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the Regional Committees will process the application throughout the year. During the time of previous regulation was in force, the institutions were granted recognition mentioning the academic year. After the new regulations came into force as the processing will be done throughout the year, the academic session will not be mentioned and the recognition order will come into force with effect from the date of issuance of the order for prospective effect. Further, it is to the institution to affiliate itself to the concerned affiliating authority for the academic session which is viable for offering the course.

39. From the above, it is clear that only the affiliating authority like the University has to specify the academic year which is viable. If the Academic Year specified by the NCTE has already started before the institution obtained the recognition order, the affiliating authority will have to decide whether to affiliate the institution in the running academic year or for the next academic year and the academic year of the course would mean the academic year as prescribed by the concerned affiliating University or affiliating body. It has been clarified by the Regional Director that as per the revised procedure, the institution can submit an application to the NCTE throughout the year and the Regional Committees will process the application throughout the year and the academic session will not be mentioned in the recognition order and it is for the concerned affiliating authority to decide the academic session which is viable for offering the course.

40. Learned counsel appearing for the Madras University placed for our consideration the guidelines framed by the Madras University with regard to the grant of provisional affiliation to B.Ed. Colleges, and the guidelines read as follows:-

1. The last date for receipt of application from the Educational Agencies for starting new Education Colleges for the successive academic year will be 31st October of every year and the cut off date for receipt of the late application (i.e. received beyond the statutory date of 31st October) will be 10th December of that year, provided a penal fee of Rs.30,000/- per College/Institution will be collected for starting fresh private Colleges/Institutions. Applications received beyond 10th December will be summarily rejected without intimation.
2. The applications received from the Educational Agencies for starting of new self-financing Education Colleges to offer B.Ed. Degree Course will be taken up for consideration only after the Management comply with the requirements of getting approval (unconditional approval) from the N.C.T.E. Bangalore

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and GO/NOC from the State Government and submit the same to the University on or before 31st March of that year.

3. After receiving NOC and the unconditional approval from the NCTE, an Inspection Commission will be appointed.

4. In some cases, the Inspection Commission was appointed without NOC of Government of Tamil Nadu based on the order of High Court and also as per the instructions of the NCTE.

5. The Affiliation Committee at its meeting held on 298.2006 has considered the D.O.Letter No.49-6/04/NCTE N&S, dated 31.5.2006 from the Chairperson, NCTE, New Delhi duly forwarded by the Special Secretary to Government, Higher Education (E1) Department, Government of Tamil Nadu regarding grant of affiliation to Education Colleges recognized by the NCTE without insisting NOC from the State Government together with the observation of the Hon'ble Supreme Court that once recognition has been granted by the NCTE under section 14(b) of the Act, every University (Examining Body) is obliged to grant affiliation to such Institution and the Committee has noted the contents of the above letter and recommended to the Syndicate for implementation. The Syndicate at its meeting held on 25.9.2007 has approved the above recommendations.

6. The Inspection Commission after inspecting in the college will submit a report on the infrastructural facilities such as Class Rooms, Accommodation, Laboratory, Equipment, Library, Staff, Furniture, Hostel facilities, Play ground etc. made available by the Management for starting the self-financing Education College to offer one-year B.Ed. Degree course.

7. The report of the Inspection Commission will be sent to the management for the compliance report on the deficiencies pointed out by the Inspection Commission.

8. After receiving the compliance report, the matter will be placed before the Affiliation Committee and the Syndicate for consideration.

9. The preferable last date for grant of affiliation is 31st August of every year for that academic year.

41. The above guidelines are also acceptable to the other concerned Universities which are represented before us by their respective counsel. In our opinion, these guidelines would take care of the grievance of the institutions that the Universities do not accept the application for affiliation unless accompanied by recognition order. The institutions can apply simultaneously to the Universities for affiliation but the application for affiliation shall be processed only after the grant of recognition by the NCTE. If the NCTE recognition is granted on or before 31st March of the year, the University will consider the grant of affiliation subject

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to the compliance of the conditions of the University statutes not inconsistent with the NCTE regulations and the affiliation would be liable to be granted for the same academic year on or before 31st August of that academic year. It has been assured by the counsel appearing for the Universities that though the period of 150 days is mentioned in the guidelines, the Universities will make efforts to complete the process of grant of affiliation ordinarily within a period of 90 days from the date of receipt of the NCTE order. Learned counsel for the Universities also assured that they will act on the communication from the NCTE to the concerned institution, granting recognition and it would be subject to the condition that the gazette notification would be produced before the grant of affiliation.

42. In the result, in view of the foregoing discussion, the writ petition is dismissed with costs. Consequently, miscellaneous petitions are also dismissed.

js/pv

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Secretary,
The State of Tamil Nadu,
Higher Education
Department, Fort St.George,
Chennai-600 009.

2. The Registrar,
Manonmaniam Sundaranar University,
Abishekapuram,
Tirunelveli District.

3. The Controller of Examinations,
Manonmaniam Sundaranar University,
Abishekapuram,
Tirunelveli District.

+ 1 cc to M/s. Raw & Reddy, Advocate SR No. 62077
+ 1 cc to M/s. Kandavadivel Doraisami, Advocate SR No. 62107
+ 1 cc to Mr. R. Suresh Kumar, Advocate SR No. 62114
+ 1 cc to Mr. B. Rabu Manokar Advocate SR No. 62144
+ 3 ccs to Mr. M. Sekar Advocate SR No. 62191
+ 1 cc to the Government Pleader, SR No.62182

VC(CO)
SR/11.1.2008

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